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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 EVANS TRANSPORTATION
SERVICES, INC.,

11 Plaintiff,

12 v.

13 NORTHLAND SERVICES, INC.,

14 Defendant.
15

CASE NO. C11-1713MJP

ORDER ON DEFENDANT'S
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT AND
MOTION FOR SUMMARY
JUDGMENT

16 This matter comes before the Court on Defendant Northland Services, Inc.'s motion to
17 dismiss and motion for summary judgment. (Dkt. No. 13.) Having reviewed the motions;
18 Plaintiff's response (Dkt. No. 16.); Defendant's reply (Dkt. No. 22); Plaintiff's surreply (Dkt.
19 No. 27.); and all related filings, the Court GRANTS Defendants' motion to dismiss for lack of
20 subject matter jurisdiction.

21 **Background**

22 This case involves a contract dispute over the shipment of wall panels from a third-party
23 manufacturer Koreteck Inc. ("Koreteck") in Staunton, Virginia to its final destination in Nome,
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1 Alaska. Plaintiff Evans Transportation Services, Inc. (“Evans”) brokered agreements with
2 various carriers to ship Koreteck’s wall panels from Virginia to Defendant Northland Services
3 Inc.’s (“Northland”) shipping terminal in Seattle. (Dkt. No. 23, Fitzgerald Decl., Ex. 5.) Once the
4 wall panels were received, Defendant delivered the panels to Neeser Construction, Inc.
5 (“Neeser”) in Nome. (Id.) Koreteck did not pay Plaintiff for the 15 shipments it arranged from
6 Virginia to Seattle between April 2010 and June 2010 and has since dissolved. (Dkt. No.18,
7 Johnson Decl., at ¶10.)

8 Evans is now suing Northland for the services it rendered between Virginia and Seattle.
9 This dispute arises from bills of lading which documented the shipments between Virginia and
10 Nome. A bill of lading lists the consignor (the carrier of the goods), consignee (the recipient of
11 the goods), and the shipper (the goods’ manufacturer). Each completed shipment from Virginia
12 to Nome had two bills of lading—one for the Virginia to Seattle leg, and the other for the Seattle
13 to Nome leg. (Dkt. No. 23, Fitzgerald Decl., Exs. 4 and 5.) The first leg’s bills of lading list
14 Northland as the consignee. (Dkt. No. 23, Fitzgerald Decl., Ex. 5.) The second leg’s bills of
15 lading list Neeser as the consignee. (Dkt. No. 23, Fitzgerald Decl., Ex. 4.) Plaintiff alleges the
16 contractual relationship arose from Northland’s designation as consignee on the bills of lading
17 from the shipments between Virginia and Seattle. (Dkt. No.18, Johnson Decl., at ¶10.)

18 Discussion

19 Defendant Northland moves to dismiss this complaint because there is no subject matter
20 jurisdiction under the Interstate Commerce Commission Termination Act (“ICCTA”) and
21 alternatively, moves for summary judgment that no contractual relationship existed. Since the
22 Court agrees it does not have subject matter jurisdiction under the ICCTA of 1995, the Court
23 need not reach the summary judgment motion.

1 A. Motion to Dismiss Standard under Rule 12(b)(6)

2 As a court of limited jurisdiction, a district court must ensure that it has subject matter
3 jurisdiction before proceeding further. Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1093 (9th Cir.
4 2004). “The party asserting jurisdiction bears the burden of establishing subject matter
5 jurisdiction on a motion to dismiss for lack of subject matter jurisdiction.” In re Dynamic
6 Random Access Memory (DRAM) Antitrust Litig., 546 F.3d 981, 984 (9th Cir. 2008).
7 Ultimately, “district courts have only jurisdiction which Congress grants through statute.”
8 Murphey v. Lanier, 997 F.Supp. 1348, 1349-50 (S.D. Cal. 1998). However, merely “alleging
9 violation of a federal statute is not always sufficient to invoke federal question jurisdiction.”
10 Cannon v. University of Chicago, 441 U.S. 677, 688 (1979). “What ultimately must be
11 determined is whether Congress intended to create the private remedy asserted.” Transamerica
12 Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15-16 (1979).

13 B. Subject Matter Jurisdiction Does Not Exist under ICCTA 49 U.S.C. §13706

14 The Court lacks subject matter jurisdiction under the ICCTA.

15 First, the ICCTA of 1995 eliminated federal question jurisdiction over state law contract
16 claims. Prior to 1995, carriers were required to maintain tariffs on file with the federal Interstate
17 Commerce Commission (“ICC”). As a result, federal jurisdiction was present in cases where
18 carriers sought to recover unpaid freight charges because the disputed charges were based on a
19 federally-required tariff with the ICC. See GMG Transwest Corp. v. PDK Labs, Inc. No. 07-CV-
20 2548TCP-ARL, 2010 WL 3710421, at *3 (E.D. N.Y. August 12, 2010). The ICCTA, however,
21 eliminated the need for filed tariffs (with limited exceptions) and collection of freight charges are
22 now considered standard state law breach of contract claims. Id. at *2; see also Mayflower
23 Transit, LLC v. Interra Indus., LLC, No. 07-CV-5963WHW, 2008 WL 2559358 at *2 (D. N.J.
24 June 26, 2008).

1 Here, Plaintiff's claim does not fall into an ICCTA exception and is based on contract.
2 Since the shipment was not governed by a federally-required tariff, there is no basis for federal
3 jurisdiction. To the extent Plaintiff's cite to Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.,
4 460 U.S. 533, 538 (1983), Plaintiff's argument is misplaced. Thurston was decided before 1995
5 and did not address the ICCTA's elimination of the filed tariff requirement. Thurston Motor
6 Lines, 460 U.S. at 534.

7 Second, federal question jurisdiction does not exist based on Plaintiff's claim under
8 §13706. Section 13706 does not provide for a federal cause of action. GMG Transwest Corp. No.
9 2010 WL 3710421, at *3; see also Mayflower Transit, LLC 2008 WL 2559358, at *1 n. 1
10 (reasoning §13706 does not create a federal cause of action because not all sections of the federal
11 code create causes of actions). In addition, §13706 does not create liability in the consignee for
12 shipping charges where there was a contract allocating the charges elsewhere. Central Freight
13 Lines, Inc. v. U.S., 87 Fed.Cl. 104, 111 (Fed. Cl. 2009). Although there is a dispute as to whether
14 a contractual relationship existed between Plaintiff and Defendant, there is no question there was
15 contract which held Koreteck liable for the charges. In other words, §13706 does not apply
16 because there was at least a contract allocating the charges to the shipper – even if that shipper
17 since dissolved.

18 Third, Plaintiff's reliance on Emmert Indus. Corp. v. Artisan Associates, Inc. to argue the
19 Ninth Circuit recognized federal question jurisdiction is misplaced. The issue before the Ninth
20 Circuit in Emmert was not whether the ICCTA gave rise to federal question jurisdiction. It was
21 whether the statute of limitations under the ICCTA could be used as an affirmative defense in a
22 state law cause of action. Emmert Indus. Corp. v. Artisan Associates, Inc., 497 F.3d 982, 986
23 (9th Cir. 2007). In Emmert, the court already had subject matter jurisdiction based on diversity.
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1 Id. at 985. Here, Plaintiff's claim relates to §13706, not the statute of limitations provision. In
2 addition, the Court does not have diversity jurisdiction because Plaintiff's claim is less than
3 \$75,000. (Dkt. No. 1 at 4.) Plaintiff's reliance on Emmert to argue federal question jurisdiction
4 fails.


5 Since this case is a breach of contract case that does not involve a federally-required
6 tariff, the Court GRANTS Defendant's motion to dismiss for lack of subject matter jurisdiction.

7 **Conclusion**

8 The Court DISMISSES Plaintiff's claim without prejudice because the Court does not
9 have subject matter jurisdiction. The Court need not consider Defendant's motion for summary
10 judgment or Plaintiff's motion to strike declarations.

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12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated this 6th day of March, 2012.

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15 Marsha J. Pechman
16 United States District Judge
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